IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 2ND FEBRUARY 2007 / 13TH MAGHA 1928

CRL.A.No. 101 of 2004

SC.300/1999 of ADDL.SESSIONS COURT (ADHOC), ALAPPUZHA
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APPELLANTS/ACCUSED:

1. SANTHOSH KUMAR @ KOCHU,
   KANKALITHARAYIL, BHARANIKAVU,
   NORTH MURI, KATTANAM VILLAGE.

2. SURESH KUMAR @ SURESH, POLAKUZHIYIL,
   BHARANIVAKU NORTH MURI, KATTANAM VILLAGE.

3. VIJAYAKUMAR @ VIJAYAN, ASWATHI BHAVANATHIL,
   THEKKEKARA MURI, THEKKEKARA VILLAGE

BY ADV. SRI.M.NARAYANA PRASAD
SRI.R.KRISHNA RAJ
SRI.A.SHANAVAS KHAN
SRI.P.R.HARIKUMAR
SMT.G.PRATHISHYA

RESPONDENT/COMPLAINANT:

CIRCLE INSPECTTOR OF POLICE,
HARIPAD, REP. BY PUBLIC PROSECUTOR,
HIGH COURT.

BY PUBLIC PROSECUTOR SRI.K.C.SANTHOSH KUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 02/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. Koshy & K.P.Balachandran, JJ.

Crl.A.No. 101 Of 2004

JUDGMENT

Balachandran, J.

Appellants 1 to 3 were Accused Nos.1 to 3 in S.C.No.300/99 on the file of the Additional Sessions Court, Fast Track (Adhoc-I), Alappuzha. They stood indicted for offences under Sections 449, 302, 307 and 324 IPC read with Section 34 thereof, inter alia, on the allegation that at about 11.45 p.m. on 24.12.1998 they committed house trespass into the house in the residential occupation of late Ramachandran as also PWs 2, 3 and 6, namely, "Sunil Bhavanam", Thamallackal, Kumarapuram Village, Karthikappally Taluk with the intention of committing murder of the said Ramachandran; that the first appellant stabbed Ramachandran with a knife on his chest and abdomen, causing penetrating fatal injuries; that the second

appellant inflicted a cut injury on the left side of forehead of Ramachandran with a chopper; that the second and third appellants together inflicted several cut injuries on different parts of the body of Ramachandran with the choppers held by them; that on the intervention of PWs 2 and 3, the second appellant inflicted cut injuries to PW3 Anil Kumar with the same chopper on the left side of his chin and left side of his chest; the third appellant inflicted cut injury on the vertex of PW2 Ajesh Kumar with the chopper held by him; that PWs 2 and 3 rushed Ramachandran to the Government Hospital, Haripad in an autorickshaw, where the duty doctor attended on him and thereafter he was referred to the Medical College Hospital, Alappuzha, where PW8, Dr.Anil Kumar, Asst. Professor of Surgery, examined him and performed operation, but, the said Ramachandran succumbed to the injuries inflicted on him, at about 7 a.m. on 25.12.1998 in the operation theatre at the Medical College Hospital, Alappuzha.

2. On being informed of the occurrence, PW1, the eldest son of the deceased came over to the hospital and gathered information from PWs 2, 3 and 6, who were present at the hospital and later, on the death of his father, he went over to the Haripad Police Station and gave Exhibit P1 F.I. Statement on the basis of which the crime was registered by PW27, drawing up Exhibit P29 FIR in that behalf at 9 a.m. on 25.12.1998. PW31, the C.I. of Police conducted investigation in the case and on completion of the investigation, he submitted final report, charge sheeting the accused for offences as aforesaid.

3. The case was committed to the Sessions Court by the Judicial First Class Magistrate-I, Haripad, after complying with all legal formalities, vide C.P.No.143/99. The learned Additional Sessions Judge, who tried the case, found the appellants not guilty of the offence under Section 307 IPC and acquitted them of that offence, but found them guilty of the offences under Sections 302, 324 and

449 IPC read with Section 34 thereof; convicted them thereunder and sentenced them to undergo imprisonment for life and to pay a fine of Rupees ten thousand each under Section 302 IPC and in default to undergo rigorous imprisonment for a further period of one year each; to undergo rigorous imprisonment for seven years and to pay a fine of Rupees five thousand each under Section 449 IPC and in default to undergo rigorous imprisonment for a further term of six months each and to undergo rigorous imprisonment for one year each under Section 324 IPC. It was also directed that the substantive sentences of imprisonment shall run concurrently, Hence, this appeal by the aggrieved accused.

4. The witnesses to the occurrence are PWs 2, 3 and 6, who are the children and wife of the deceased. F.I. Statement has been given by PW1, the eldest son of the deceased, based on the information he gathered from PWs 2 and 3, who are his younger brothers and PW6, their mother. In

Exhibit P1 F.I. Statement, the details of the accused furnished is as follows:

It is contended before us by the learned counsel for the appellants that the description of A1 is not sufficient to pin point A1 as the accused; that further the occurrence witnesses are all close relatives of the deceased, whose evidence requires close scrutiny; that the identification of the accused is not proper in as much as there is no test identification parade conducted and the identification for the first time in court, after about five years of the occurrence, is not sufficient or acceptable as proper identification; that though the crime is seen to have been registered at 9 a.m. on 25.12.1998, it reached the court only at 10 a.m. on 28.12.1998 and it is suggestive that the crime was registered not on 25.12.1998, but, only later, after making attempt at identification of the accused; that PW31, in

Exhibit P27 scene mahazar has not mentioned anything regarding the existence of light in the room of occurrence; that there is no proper blood grouping conducted and that the Surgeon and the postmortem doctor differs regarding the nature of the injuries found on the body of the deceased; that the recovery of MOs 5 to 7 weapons allegedly on the information furnished by the second accused does not bind the accused, as there is no authorship of concealment in the information so furnished and that in any event the evidence adduced by the prosecution has only cast a suspicion that the accused might have committed the offence and that suspicion, however, strong cannot take the place of proof and cannot be the basis of conviction.

5. Exhibit P1 F.I. statement is recorded by PW27, the S.I. of Police at 9 a.m. on 25.12.1998 and crime is registered on the basis thereof, drawing up Exhibit P29 FIR. It is on the basis of the dated initial of the learned Magistrate on

Exhibit P29 FIR that it is vehemently contended before us by the learned counsel for the appellants that the date of receipt of FIR in court is 28.12.1998 and therefore, there is long delay of about three days for the FIR being submitted before court. The learned Sessions Judge has, on the basis of the dated seals affixed in the F.I. Statement, which shows the date as 26.12.1998, held that the FIR has reached the court on 26.12.1998, though the learned Magistrate has initialed it only on 28.12.1998. Even assuming that there is delay as is contended by the counsel for the appellants, we see no merit in the contention advanced, for the reason that Exhibit P24 inquest report is prepared at 11 a.m. on 25.12.1998 by PW31, the Investigating Officer and Exhibit P27 scene mahazar is prepared by him at 3 p.m. on 25.12.1998. These aspects show that the crime was actually registered at 9 a.m. on 25.12.1998 as is shown in Exhibits P1 and P29. When there is evidence to show that the crime was actually registered at the time and date shown in

the FIR, there is no reason to think that there is any foul play by reason of the FIR reaching court belatedly. In this connection, we refer to the decision of the Apex Court in **Sunil Kumar v. State of Rajasthan** (2005 AIR SCW 589).

6. The contention that there was no light in the room, where the occurrence has taken place, is advanced on the basis of Exhibit P27 scene mahazar, wherein the Investigating Officer has not mentioned of any light fixed in the room of occurrence. All the same, in Exhibit P27 scene mahazar itself, towards the concluding portion, PW31 has stated that there is light and fan in all the rooms. To lend assurance to the said statement is the oral evidence of PWs 2, 3 and 6. According to all the witnesses, on hearing ringing of the calling bell and on beating on the door, they switched on the lights both in the room, which is the scene of occurrence and in front of that room. Existence of light so lighted in the room, wherein the

occurrence has taken place as also in front of the said room has not been properly assailed in the testimony of PWs 2, 3 and 6. Further, the convincing testimonies of PWs 2, 3 and 6 does not give any room for suspicion that there was light in the room, where the occurrence has taken place. Hence, the contention that there was absence of light in the scene of occurrence is devoid of merit.

7. The contention advanced on behalf of the appellants that identification of the accused by PWs 2, 3 and 6 for the first time in court was not proper identification has been accepted by the court below. It is true, generally, that when the witnesses have no prior acquaintance with the accused, it is not sufficient that they identify the accused for the first time before court and that a test identification parade is necessary to establish that the witnesses have not gone wrong in identifying the assailants.

8. In the instant case, PWs 2, 3 and 6 are natural and probable witnesses in respect of the occurrence that had taken place in their residence and are having no interest to implicate anyone, who is innocent and to see that the real culprit escapes punishment. It cannot be believed that PWs 2, 3 and 6, who were witnessing the heinous crime, standing very close to the accused and the deceased, would not have formed an impression of the identifying features of each of the accused.

9. The Apex Court has held in **George v. State of Kerala** (1998 Crl.LJ 2034) as follows:

> "Law is well settled that identification of an accused in Court is the substantive evidence of the person identifying and his earlier identification in a T.I. parade corroborates the same. In other words, want of evidence of earlier identification in a T.I. parade does not affect the admissibility of the evidence of identification in Court."

In **Kanta Prasad v. Delhi Administration** (AIR 1958 SC 350), the Apex Court held as follows:

> "It would no doubt have been prudent to hold a test identification parade with respect to witnesses, who did not know the accused before the occurrence, but failure to hold such a parade would not make inadmissible the evidence of identification in Court."

The Apex Court has observed in **Jadunath Singh v. State of U.P.** (AIR 1971 SC 363) that absence of test identification parade is not necessarily fatal. In **Ronny alias Ronald James Alwaris, etc., v. State of Maharashtra** (AIR 1998 SC 1251), the Apex Court has observed as follows:

> "If a witness has known an accused earlier in such circumstances which lend assurance to identification by him in court and if there is no inherent improbability or inconsistency, there is

> no reason why his statement in court about the identification of accused should not be relied upon as any other acceptable but uncorroborated testimony."

In **Malkhansingh v. State of Madhya Pradesh** (AIR 2003 SC 2669), the Apex Court, in paragraph 16 of the judgment, observed as follows:

> "It is well settled that the substantive evidence is the evidence of identification in Court and the test identification parade provides corroboration to the identification of the witness in Court, if required. However, what weight must be attached to the evidence of identification in Court, which is not preceded by a test identification parade, is a matter for the Courts of fact to examine. In the instant case, the Courts below have concurrently found the evidence of the prosecutrix to be reliable and, therefore, there was no need for the corroboration of her evidence in Court as she was found to be implicitly reliable. We find no error in the reasoning of the Courts below.

From the facts of the case, it is quite apparent that the prosecutrix did not even know the appellants and did not make any effort to falsely implicate them by naming them at any stage. The crime was perpetrated in broad day light. The prosecutrix had sufficient opportunity to observe the features of the appellants who raped her one after the other. Before the rape was committed, she was threatened and intimidated by the appellants. After the rape was committed, she was again threatened and intimidated by them. All this must have taken time. This is not a case where the identifying witness had only a fleeting glimpse of the appellants on a dark night. She also had a reason to remember their faces as they had committed a heinous offence and put her to shame. She had, therefore, abundant opportunity to notice their features. In fact on account of her traumatic and tragic experience, the faces of the appellants must have got imprinted in her memory and there was no chance of her making a mistake about their identity."

10. In the instant case also, it is not that the occurrence witnesses were having only fleeting glimpse of the appellants. They were witnessing the appellants committing the heinous crime against the deceased, who is the father of PWs 2 and 3 and husband of PW6. No one having such close relationship with the victim can forget the faces of the assailants, especially when they have witnessed the dreadful acts committed by them for about 6-7 minutes, standing close by. They were so close to the accused and the deceased that PWs 2 and 3 have even sustained injuries at the hands of the assailants and had abundant opportunity to notice their features. Further, identification of the first accused as Kurathikkattukaran Santhosh has to be understood as a proper identification for the reason that unless the occurrence witnesses know him with the aforesaid identity, it cannot be so mentioned to PW1 and PW1 would not have made mention of the said Santhosh as Kurathikkattukaran Santhosh. There is no question also put to PWs 2,

3 and 6 disputing the identity of the first accused as not being the person referred to as Kurathikkattukaran Santhosh.

11. The contention that occurrence witnesses are interested witnesses, being close relatives of the deceased, is absolutely devoid of any merit as in relation to an occurrence that takes place within the house, only the close relatives of the victim, who are the other occupants of the house can become the witnesses and the Apex Court has repeatedly held in various decisions that existence of close relationship between the witnesses and the deceased is no reason to disbelieve their testimony and it is only that close scrutiny has to be made of their evidence in cases, where circumstances so demand. In the instance case, we have no doubt that PWs 2 and 3, who are the sons of the deceased and PW6, the widow of the deceased, would not give false evidence implicating any innocent person, thereby giving an opportunity to the real culprit to escape. In this connection, we refer to the

decisions of the Apex Court in **Dalip Singh v. State of Punjab** (AIR 1953 SC 364) and **Israr v. State of U.P.** (2004 AIR SCW 6916).

12. Now, coming to the question of appreciation of evidence, we will first deal with the ocular testimonies of PWs 2, 3 and 6, who are the occurrence witnesses.

13. PW2, the son of the deceased, has given evidence that himself along with his deceased father, his mother (PW6) and his elder brother Anilkumar (PW3) and Rajamma, the niece of his deceased father, were residing together at Sunil Bhavanam at Thamallakkal at the time of the occurrence. His eldest brother (PW1) was residing one and a half kilometres west from that house. All the same, PW1 was conducting a music centre adjacent to their house under the name and style "Geetham Audios". As usual, on 24.12.1998, by about 10 p.m., the occupants of Sunil Bhavanam had their supper and they went to bed. By about 11.45 hours

that night he woke up hearing the calling bell ringing. There was also beating on the door of the front room, wherein his father was sleeping. He also heard the deceased responding as to who it is. Himself and PW3, who were sleeping in the northern room of the front room, wherein his deceased father was sleeping, came over to the front room and switched on the lights both in the front room and outside. His father opened the upper half of the twin door, which opens towards outside. Immediately, Santhosh (A1) jumped over the lower half of the door and entered into the front room and following him the other two accused, who were accompanying him, also entered into the room jumping over the lower half portion of the front door. According to him, the first accused declared that all of them will be done away with in case the amount due to him is not paid and inflicted a stab injury on the abdomen of his father, the deceased with a knife. Then the second accused inflicted a cut on the head of the deceased with a chopper and

the third accused Vijayakumar inflicted several cuts on the body of the deceased with a chopper. In the meanwhile, the first accused inflicted several stab injuries alternatively on the abdomen and chest of the deceased. Thereupon, PW3 intervened and tried to obstruct them and then the second accused inflicted cuts on the chin and chest of PW3 and the third accused inflicted cut on the head of PW2 with the chopper. He identified MO5 as the knife used by the first accused to inflict stab injuries on the body of the deceased and MOs 6 and 7 as the choppers used by the second and third accused for causing cut injuries. After thus inflicting injuries, all accused jumped over the half door and took to heels along with the weapons. Himself and PW3 followed them upto the road and then they saw the accused proceeding getting on to an YEZDI motorcycle. On hearing the alarm raised by himself, PW3 and PW6 as also Rajamma, who witnessed the occurrence, his neighbours Rajan and Ramachandran (PWs 19 and 20) came running; they got

down an autorickshaw from the Narakathara Junction and himself and PW3 took the deceased in the said autorickshaw to the Government Hospital, Haripad, where the doctor, after giving first aid, instructed them to take the deceased to the Medical College Hospital, Alappuzha and accordingly, himself along with PWs 3 and 6 took the deceased to the Medical College Hospital, Alappuzha. At the Medical College Hospital, the deceased was immediately subjected to surgery. But, by 7 a.m. on the next day he succumbed to the injuries. PWs 2 and 3 were also admitted in the Medical College Hospital, Alappuzha. At about 2.00 hours in the night, PW2 informed of the matter over telephone to PW1.

14. PW2 has further deposed that in the morning on the date of occurrence, the first accused, along with Kavilparambil Chandran, had come over to their house and again at about 1.30 hours at noon, the first accused, along with the second accused, came over to their house and enquired the whereabouts of

their father to CW14 Soman; that the first and second accused had quarrel with CW14 Soman in relation to some cash transaction and the first accused gave a blow to CW14; that he enquired Soman as to what is the matter and then Soman told him that the deceased and Kavilparambil Chandran owed some money to the first accused. PW2 further deposed that the first and second accused were then coming over on an YEZDI motorcycle. He also added that in the morning also the first accused was coming over to their house on an YESDI motorcycle. He does not remember the registration number of the said motorcycle, but, he has deposed to its colour as being black. According to PW2, he has identified the accused at the police station. He has also identified that MOs 8 and 9 were respectively the shirt and lungi worn by the first accused, MOS 10 and 11 were respectively the shirt and lungi worn by the second accused and that MOs 12 and 13 were respectively the shirt and lungi worn by the third accused. He has further identified MOs 1 and 2

respectively as the Kaily and the towel worn by the deceased at the time of occurrence. He has also stated that while inflicting cut injuries on the deceased, the accused also sustained injuries mutually. He has also categorically stated that within the room and outside there having been light, the accused could be seen. He has stated in cross-examination that himself and PW3 were also examined by the doctor at the Government Hospital, Haripad and also at the Medical College Hospital, Alappuzha.

15. In cross-examination, it has been brought out that the second and third accused trespassed into the house jumping over the half door, only after infliction of the first stab injury by the first accused and that being stunned by the acts of the accused in inflicting injuries on their father, himself and PW3 could not do anything by way of defence and that altogether the occurrence took place in about 5-6 minutes. To the specific suggestive question in cross-examination that light

was not being used in the room of the deceased, PW2 has stated that in all the rooms in their house light is being used. He has also stated that none of the accused had used sword stick ( ). PW2 has also stated that he could observe the dress worn by each of the accused, though he did not make any particular attempt to observe their dress. In cross-examination he has also stated that himself and PW3 went over upto the National Highway, which is about fifty feet from their residence to ascertain as to how the accused came over there. He has asserted that the accused did not sustain any injury either from the deceased or from himself or from PW3, but that they sustained injuries while the deceased attempted to avert the attack and the cuts aimed at the deceased accidentally fell on the other accused and thus, by mutual infliction all the accused sustained injuries.

16. PW3 is the brother of PW2. His evidence is consistent with the testimony given by PW2 and he has corroborated PW2 in all material aspects as

regards the occurrence. He has stated that the first accused was having some financial transaction with the deceased and that the first accused, along with another, had come over to their house both in the morning and at noon. According to him, the person, who was then accompanying the first accused, appears to the second accused. He has also corroborated PW2 when he says that the lights in the room of the deceased and outside were lighted and it was thereafter that the deceased opened the upper portion of the door of the front room, which opens towards outside. He stated that immediately on opening the upper portion of the door, the first accused jumped over the lower half portion of the door and trespassed into the house and inflicted stab injury on the abdomen of the deceased. He also identified the second accused as the one who inflicted a cut injury on the head of the deceased. He further stated that thereafter the third accused also inflicted cut injury and in the meanwhile the first accused himself inflicted stab injuries on

the chest and abdomen of the deceased by stabbing on the chest and abdomen alternatively. It is also stated by him that the third accused inflicted cut injury on the head of PW2 and the second accused inflicted two cuts on his body, one on his chin and the other on his chest and thereafter all accused went out jumping over the half door. He has also stated that following the accused, himself and PW2 went upto the road and they could see the accused getting on to a motor cycle and moving away. He also stated that the motorcycle is an "YEZDI" one, having black colour. He also stated that the accused were having the weapons with them while they took to heels from their house. He further stated that he identified the accused at the police station. According to him, he had been questioned by the Circle Inspector of Police on the very next day of the occurrence and even before his coming over to his house for cremation. He has also expressed doubt that it was the second accused, who accompanied the first accused when the latter came

over to their house at noon on the date of occurrence. To the suggestive question put in defence as to what was the time when the first and second accused came over to their house in the morning, PW3 has stated that it was at about ten hours in the morning. In cross-examination, he stated further that he can assert that it was the second accused, who accompanied the first accused when the latter came over to his house in the morning on the date of occurrence.

17. It is also seen that a suggestive question was put to PW3 as to whether he had come to know that an amount of Rupees twenty thousand was received by his father, the deceased from the first accused, to which, PW3 has answered that he had come to know. In cross-examination, PW3 has stated that infliction of stab injury on the deceased was with a weapon which did have a pointed end and having sharpness on both sides of the blade. As regards the time taken for commission of the crime also PW3 has corroborated PW2, when he says that

the occurrence took place in 6-7 minutes. He has also vehemently denied the suggestion that there was no light in the room, where the occurrence had taken place, at the time of occurrence taking place.

18. PW6, the mother of PWs 2 and 3 and the widow of the deceased, has given evidence corroborating the testimonies of PWs 2 and 3 on all material particulars as regards the occurrence. She has also stated that after the occurrence, the accused took to heels taking with them the weapons used in the commission of the crime. She further stated that at about 1.30 at noon, on the date of occurrence, the accused came over to their house and gave a blow to CW14 Soman stating that an amount of Rupees twenty thousand was received by the deceased from them. According to her, all the accused had come over to her house at noon. She has also identified MOs 5 to 7 as the weapons used respectively by Accused Nos.1 to 3. She deposed that MO8 shirt was identified by her, when the

police brought it over to her house and that the other dresses were identified by her at the police station. She has further stated that the occurrence has taken place in 5-6 minutes. She has also categorically denied the suggestion that there was no light in the room, wherein the occurrence has taken place and therefore, she could not see the occurrence.

19. PW8 is the Assistant Professor of Surgery at Medical College Hospital, Alappuzha, who examined the deceased and noted as many as fourteen injuries on the body of the deceased, when he was brought over to that hospital for treatment. Out of the injuries so noted by him Injury Nos.8, 11 and 13 are described by him as irregular incised penetrating wounds. When questioned with reference to MO5 dagger, PW8 has deposed that it is unlikely that the said weapon would cause irregular penetrating wound, except with deliberate movements of the hand.

20. It is the contention of the counsel for the appellants that MO5 dagger could not have been used in the commission of the crime and hence, the prosecution case is rendered suspicious. In cross-examination he has stated that in the case of injury on the neck and scrotum, the shape of incised wound may be irregular due to the contraction of the muscle attached to the skin. He has also stated that face, neck and scrotum are the three areas where such muscles are present. According to him, the irregular penetrating wound could be caused by dagger, only if stabbing was followed by sowing movements or if the injured moves during the action. There is nothing for us to presume that the injured has not moved in the course of sustaining the incised injuries. It is, therefore, possible, even according to PW8, that the penetrating injuries can have irregular shape, even if the infliction was using MO5 dagger. However, there is no much significance on the evidence so furnished by him, as we have also the

opinion of PW14, the doctor, who conducted the postmortem examination on the body of the deceased.

21. PW14 had occasion to verify minutely each and every injury on the body of the deceased in all its minutest details. He has noted as may as thirty one injuries on the body of the deceased including one sutured injury and has deposed that Injury Nos.1, 4, 5 and 6, which he has opined as being sufficient independently to cause death, are all incised injuries, of which the margins were neatly cut and were not irregular. PW14 has further opined that Injury No.1 can be caused either by MO5 or by MO6 choppers and Injury Nos.4 to 7 can be caused by MO5 dagger. The said opinion by PW14 is not assailed successfully in cross-examination. Further, in cross-examination, PW14 has asserted that Injury Nos.4 to 7 were not irregular wounds as has been opined by PW8. Thus, the description of three injuries as irregular incised wounds by PW8, who had no occasion to conduct autopsy and to examine the details of the injuries, cannot out

weigh the opinion rendered by PW14, who examined the injuries in detail during autopsy. The difference in opinion with respect to the injuries, viz., as to whether the edges of the injuries were irregular or sharply cut does not cast any suspicion as regards the weapon used for infliction of the injuries; in the light of the evidence tendered by PW8 in cross-examination. There is, thus, no room to think that Injury Nos.4, 5 and 6 could not have been caused by a weapon, both edges of which are sharp.

22. PWs 19 and 20 are the neighbours, who reached the scene of occurrence immediately after the occurrence taking place and the accused taking to heels. On the request of PW6, PWs 19 and 20 have got down the autorickshaw of PW4 and it was in his autorickshaw that PWs 2 and 3 took the deceased to the Government Hospital, Haripad. Thus, the occurrence in the case stands convincingly established on the evidence of PWs 2, 3 and 6 and there is absolutely no room to disbelieve their

testimony on any count or on any aspect. The contention that recovery of MOs 5 to 7 weapons under Exhibit P32 recovery mahazar on the basis of Exhibit P38 information furnished by the second accused by itself cannot connect the accused with the crime, Exhibit P38 information does not contain any statement as regards the 'authorship' of concealment, was rightly accepted by the trial court and we do not find any reason to take any different view in that matter, in view of the said position having been settled by various decisions of the Apex Court. But, all the same, seizure of MOs 5 to 7, in the instant case, has got its own relevancy and significance to corroborate the testimonies of PWs 2, 3 and 6. There are other evidences also available in the case to enable the identity of the appellants being held to be the assailants without any mistake whatsoever.

23. PW31 is the Investigating Officer, who effected arrest of the accused on 3.1.1999 at 7 a.m. from the KSRTC Bus Stand, Kayamkulam.

Exhibits P17 to P19 are the arrest memos respectively in respect of Accused Nos.1 to 3. Exhibits P20 and 21 are the inspection memos in relation to the search of the body of Accused Nos.2 and 3 respectively, Exhibit P34 is the inspection memo in relation to the search of the body of the first accused and Exhibits P35 to P37 are the custody memos in relation to Accused Nos.1 to 3. PW31, the Investigating Officer, has deposed that pursuant to Exhibit P38 information furnished by the second accused Sureshkumar and with his assistance he could recover MOs 5 to 7 weapons under Exhibit P32 mahazar, attested also by PW30. It is true that in Exhibit P38 statement, there is no mention regarding authorship of concealment. All the same, PWs 2, 3 and 6, who are the occurrence witnesses, have identified MOs 5 to 7 as the weapons used respectively by Accused Nos.1 to 3 to inflict injuries on the body of the deceased and on PWs 2 and 3. The evidence of the ocular witnesses, identifying the weapons cannot be

suspected for the sole reason that they do not notice the distinguishing feature on the weapons. The mistaken reference to the dagger as Sword stick is also not of any serious consequence and is not sufficient to suspect the evidence of PWs 2, 3 and 6, identifying MOs 5 to 7. However, the medical evidence suggests that the injuries sustained on the body of the deceased could be caused by MOs 5 to 7 and the injuries found on the body of PWs 2 and 3 could be caused by a chopper of the nature of MOs 6 and 7. The evidence of the occurrence witnesses also is to the effect that the accused carried the weapons with them, when they took to heels from the scene of occurrence. Recovery of MOs 5 to 7 under Exhibit P32 mahazar by PW31 at the instance of the second accused was from the bushy area in the road puramboke, near the bridge at Danapady in Haripad, by the side of NH 47.

24. PW30, the attestor to Exhibit P32 recovery mahazar, has corroborated the testimony of PW31, regarding the recovery of MOs 5 to 7 and its

production before PW31 by the second accused. There is absolutely no reason to disbelieve the testimony of PW30 in proof of the recovery effected under Exhibit P32 mahazar. He has also identified the second accused in court and has stated that it was the second accused, who had alighted from the jeep and went to the spot, where the weapons were and traced it and produced it before PW31. He has identified his signature in Exhibit P32 mahazar and has also identified MOs 5 to 7. As observed by the trial court, despite corss-examination, nothing has been brought out to discredit the testimony of PW30 and PW30 had no reason to show undue loyalty to the prosecution or hostility to any of the accused. It was also observed that the bushy area in the road puramboke, from where the second accused took the weapons and produced before PW31, was not a place likely to catch the attention of passers by. Hence, the production of MOs 5 to 7 by the second accused taking it from among the bushes where weapons of the nature of MOs 5 to 7 are not likely to be

present is very significant and is an incriminating circumstance against him.

25. It is a relevant fact within the meaning of Section 8 of the Evidence At and lends relevant corroboration to the ocular evidence of PWs 2, 3 and 6, including in the matter of identity of the accused. Further, MOs 5 to 7 were forwarded to the Forensic Science Laboratory and Exhibit P42 report of chemical analysis shows that on MOs 5 to 7, which are enlisted in Exhibit P42 as items 11, 9 and 10, blood was detected. Though the quantity of blood was insufficient for determining its origin, in relation to MOs 6 and 7, the blood on MO5 was found, on analysis, to be of human origin and belong to Group 'A', which was the blood group of the deceased as well. The contention advanced on behalf of the defence that PW31 might have obtained blood from any local laboratory and smeared it on the weapons and clothes was rightly rejected by the trial court.

26. PW11 Kunjandi has given evidence that he was the registered owner of the YEZDI motorcycle bearing Reg.No.KLB 7858 and that he has sold that motorcycle to one Sreekumar, who was working with him. PW17 Pushpa has given evidence that she has produced the YEZDI motorcycle bearing Reg.No.KLB 7858 before police and that the C.I. of Police, Haripad effected seizure thereof preparing mahazar in that behalf. She deposed that she knows the first accused Santhosh and that she has got acquaintance with the second and third accused as well; that Santhakumari, the sister of the first accused, has her residence a little to the west of her house; that the colour of the motorcycle produced by her was black; that usually Rajesh, the son of her elder brother, used to bring that motorcycle; that she had been to Palani on pilgrimage and on her return, the said bike was found kept at her house. She has also deposed in cross-examination that when herself and others went over to Palani, their house was entrusted with the

said Rajesh. Thus, from her evidence, it has come out that the motorcycle was being found kept at her residence.

27. The mahazar under which the seizure of motorcycle was effected by PW31, the Investigating Officer, is Exhibit P26. There is no dispute for the first accused that the said motorcycle bearing Reg.No.KLB 7858 is owned by him. In fact, he filed an application in the committal court as Crl.M.P. No.4560/99 under Section 451 Cr.P.C. praying for release of the motorcycle to him. Therein, he averred that he is the registered owner of the said motorcycle and that it belongs to him. The said petition was being allowed by the learned Magistrate releasing the motorcycle to the first accused on executing bond for Rupees fifty thousand with two solvent sureties for the like sum. Accordingly, the first accused and his sureties executed bond and the motorcycle bearing Reg.No.KLB 7858 was released to the first accused.

28. PW31, the Investigating Officer, got the said motorcycle examined by PW9, the Scientific Assistant (Biology), Forensic Science Laboratory, Thiruvananthapuram on 14.1.1999 for detecting biological trace evidences, if any. PW9 detected blood on the clutch lever, front brake lever, left handle, accelerator, keys, the portion around the ignition key hole, lady's handle, seat guard, back seat handles, seats, including the front and back seats, petrol tank, speedometer unit, crash guards on both sides and the left side cover of the motorcycle, conducting Benzidine test for detecting blood. He collected blood stains on cotton swabs from the clutch lever, the keys, the portion around the ignition key hole, the left handle and the accelerator. The blood detected on other parts of the vehicle was insufficient for further examination. PW9 packed and sealed the blood stains collected and handed over the materials to PW27, who was the S.I. of Police, Haripad. PW27 collected those samples under Exhibit P13 seizure mahazar,

attested also by PW12. The blood stains collected on cotton swabs by PW9 were tested in the Forensic Science Laboratory, Thiruvananthapuram and Exhibit P42 is the report. The blood stains collected on cotton swabs by PW9 are listed in Exhibit P42 as Item Nos.17 to 21. Those items were subjected to Benzidine test and blood was detected on all those items. Presence of blood was further confirmed by spectroscopic test. Further, on Gel Diffusion test blood stains detected on all items 17 to 21 were found to be of human origin. It was further found on examination that the blood stains found on items 17, 20 and 21 belong to Group 'A', though the blood stains on items 18 and 19 were insufficient to determine the group.

29. The trial court further proceeded to consider the question as to whether the blood of the deceased belonged to Group 'A'. After a detailed discussion in paragraph 32 of the judgment, the trial court has concluded, on the basis of Exhibit P42 chemical analysis report, that

blood of the deceased belonged to Group 'A'. It is already in evidence that the assailants had left the scene of occurrence on a black YEZDI motor cycle, after committing the crime. Detection of human blood, belonging to Group 'A' from the motorcycle of the first accused, to which blood group the deceased also belonged, was found to be a strong circumstance against the first accused and it corroborated the identification of the first accused made in court by the ocular witnesses. The trial court, on the basis of the evidence tendered by PW2, found that MOs 8 and 9 are respectively the shirt and lungi worn by the first accused; MOs 10 and 11 were respectively the shirt and lungi worn by the second accused and MOs 12 and 13 were respectively the shirt and lungi worn by the third accused, at the time of occurrence. PWs 3 and 6 also identified MOs 8 to 13 as the shirts and lungies worn by Accused Nos.1 to 3 respectively at the time of occurrence. The trial court observed that PW3 has correctly mentioned the colours of MOs

8 to 13 and that he has deposed that he stated to the C.I. of Police about the dresses worn by the assailants even before the arrest of the accused. PW6 also gave the correct description of the shirt and lungi worn by each of the accused. The evidence of PW6 on that aspect is not found challenged in cross-examination. In the circumstances, it was rightly found by the trial court that MOs 8 to 13 are established to be the dresses worn by the assailants at the time of occurrence.

30. MO8 shirt of the first accused was being seized by PW27, the S.I. of Police, conducting a search in the house of the first accused on 25.12.1998 under Exhibit P30 search memo and Exhibit P25 search list. PW21 is an attestor to Exhibit P25 and has deposed that he was present at the time of search and that he witnessed the seizure of a shirt from the house of the first accused. MOs 9 to 13 were seized on 3.1.1999 by PW31, the C.I. of Police. Exhibit P39 is the mahazar for seizure of MOs 10 and 11 and Exhibit

P40 is the mahazar for seizure of MOs 9, 12 and 13. MOs 10 and 11 were being produced by PW25, the mother of the second accused and MOs 9, 12 and 13 were being produced by PW26, the mother of the first and third accused. The trial court has rightly found that there is absolutely no reason to suspect the evidence of PWs 21, 27 and 31. Though PW25, the mother of the second accused, had turned hostile, denying production by her MOs 10 and 11, as the dresses belonging to her son, she admitted that the police had brought over her son to her house on 3.1.1999 at about 1.30 p.m. MOs 10 and 11 were being seized under Exhibit P39 seizure mahazar on 3.1.1999 at 1.30 p.m. According to PW25, the shirt and lungi were being taken from her house by the police and it is not that she produced it before the police. However, PW25 admitted that the shirt and lungi taken by the police did belong to the second accused. Thus, though PW25 turned hostile, her evidence establish the seizure of MOs 10 and 11, belonging to the second accused, by PW31

under Exhibit P39 seizure mahazar. Similarly, PW26, the mother of Accused Nos.1 and 3, also turned hostile. All the same, her evidence suggests that her sons were brought to the house by the police on 3.1.1999 at 2.30 p.m. and that the police had taken a lungi of the first accused and shirt and lungi of the third accused and that the C.I. of Police had prepared a mahazar, when he effected seizure of the dresses as aforesaid. Evidence of PW26, however, lends support to the prosecution in as much as her evidence establishes that MOs 9, 12 and 13 were seized from her house, though she does not consistently say that MOs 12 and 13 are the dresses of the third accused and MO9 is the lungi of the first accused.

31. Thus, the prosecution was able to establish that the dresses worn by the assailants at the time of the incident were seized during investigation and that those clothes belong to Accused Nos.1 to 3, as rightly observed by the trial court. Though the aforesaid recoveries do not furnish conclusive

evidence and is not decisive by itself in the matter of guilt, MOs 8 to 13 and their recovery corroborate the evidence of the ocular witnesses, identifying the accused.

32. MOs 8 to 13 so recovered were forwarded to the Forensic Science Laboratory. Exhibit P42 is the report of chemical analysis and that shows that blood could not be detected on MO8, which is Item No.8 in Exhibit P42, but that blood was detected on all material objections 9 to 13 and the blood stains so found were of human origin and as belonging to Group 'A'. Thus, detection of human blood, belonging to group 'A', to which blood group the deceased also belonged, is a strong incriminating circumstance and piece of evidence against Accused Nos.1 to 3.

33. Similarly, Exhibit P42 shows that blood stains of human origin were present on items 15 and 16 (MOs 10 and 11), though it was found to be insufficient for determining the group. Though blood was not detected on MO8 shirt, belonging to

the first accused, the court below has, on the basis of Exhibit P43 report of the Assistant Director (Physics), Forensic Science Laboratory, Thiruvananthapuram, come to the conclusion that MO15 buttons, recovered from the scene of occurrence, are similar to the buttons on MO8 shirt of the first accused. All these sufficiently corroborate the identification of the first accused by the ocular witnesses especially when considered in the light of the proved fact that blood of the deceased belonging to Group 'A' was detected on the motorcycle of the first accused and MO9 lungi worn by him at the time of occurrence.

34. The contention that there is no proper blood grouping conducted is devoid of any merit. Exhibit P42 chemical analysis report shows that blood grouping was done in relation to all items, where blood grouping could be done, though in relation to such of the items, of which there was no sufficient quantity of blood to have grouping done, grouping was not done and also in certain

cases, where the quantity was insufficient even to ascertain whether the blood found was of human origin. The further argument is that in all the cases, where grouping was conducted, the blood was found to be of Group 'A' and it cannot be that the blood of the deceased, PWs 2 and 3 as also the assailants could be of group 'A'. The contention is absolutely unsound in the absence of evidence to hold that PWs 2 and 3 as also the accused could or could not have group 'A' blood.

35. The evidence of PWs 2 and 3 showed that while inflicting injuries on the body of the deceased, the accused received injuries from among themselves, when the cuts aimed at the deceased mis-hit on them. According to the prosecution, the wounds of the accused were treated by PW18, who was a Nursing Assistant, retired from the Indian Military. Exhibit P22 is the certificate issued to him by the Rural Medical Practitioners' Association. PW31, the Investigating Officer, effected seizure of Exhibit P22 certificate, under

Exhibit P14 seizure mahazar, attested by PW13, who supported the said seizure. But, all the same, PW18 turned hostile and deposed that he had not treated the accused. According to him, he never practised at his house on the strength of exhibit P22. PW18 denied also of having sutured a wound on the head of the first accused or dressed the wounds of Accused Nos.2 and 3.

36. However, the evidence of PWs 2 and 3 showed that accused also sustained injuries in the occurrence. PW13 caused Accused Nos.1 to 3 being subjected to medical examination by PW10, who issued Exhibits P10 to P12 wound certificates respectively in relation to Accused Nos.1 to 3.

37. PW10 has given evidence that the first accused had a sutured wound on the scalp with two nylon sutures; that the length of the wound was 2 cms.; that the wound had healed at the time of examination and its sutures were removed. He opined, basing on the clinical features of the wound, that it appears to be more than seven days

old. The evidence tendered by PW10 also showed that the injuries noted in Exhibits P11 and P12 in relation to Accused Nos.2 and 3 respectively, were also injuries, which are more than seven days old. Thus, the evidence in the case establish that all accused 1 to 3 had sustained injuries recently. The contention that nature of injuries sustained to the accused was not ascertained by PW10 is not of any consequence, as PW10 was examining only the healed wounds, the nature of which could not be ascertained. Thus, the evidence of PWs 2 and 3 that the accused sustained injuries during the incident stands corroborated by the medical evidence tendered by PW10. As rightly observed by the court below, so much of significance would not have been there for the injuries, had only one of the accused, healed wound on his body. But, all accused 1 to 3 had healed wounds and all the wounds were more or less of the same age. This is an aspect, which corroborates the evidence of witnesses, identifying Accused Nos.1 to 3 as the

assailants.

38. Thus, on the evidence of PWs 2, 3 and 6, there is convincing evidence that at about 11.45 p.m. on 24.12.1998 all accused forcibly entered into the room of the deceased in his house, armed with deadly MOs 5 to 7 weapons; that the first accused, with MO5 knife, stabbed the deceased several times on his abdomen and chest and the second and third accused with MOs 6 and 7 choppers inflicted cut injuries on the deceased on several parts of his body, including his head; that the second and third accused attacked respectively PWs 3 and 2 with choppers and caused wounds when they intervened to ward off further attack on their father and that the deceased, though was rushed to the hospital and subjected to surgical intervention, succumbed to the injuries at about 7 a.m. on 25.12.1998. The medical evidence established that the deceased died of the injuries so sustained on his body. The accused, the clothes worn by each of them at the time of occurrence and

the weapons used by them were also identified by the ocular witnesses and their relevancy and admissibility in evidence are already discussed and found in favour of the prosecution. There are strong circumstances to corroborate the ocular testimonies of the occurrence witnesses, who have identified the accused. The accused carried the weapons with them while they took to heels and escaped on a black YEZDI motorcycle. The motorcycle was seized and as already discussed, it is established that the motorcycle belonged to the first accused. Blood was detected on several parts of the motorcycle, the clothes worn by the accused at the time of the incident recovered respectively from their houses, the weapons used by them, produced by the second accused from the place of concealment, are all circumstances which go a long way to connect the accused with the commission of the crime, as already discussed in the earlier paragraphs. The evidence of PW2 that the accused also sustained injuries during the incident stood

corroborated by the medical evidence and the age of the injuries, sustained by all the accused 1 to 3, were also found to be of the same age. Presence of blood, as discussed earlier, on material objections recovered as evidenced from Exhibit P42 chemical analysis report are strong incriminating circumstances against the accused to prove their complicity in the commission of the crime and those circumstances, corroborate the ocular testimonies of PWs 2, 3 and 6, who have identified the accused in court. Failure to conduct test identification parade, in the circumstances, though no doubt a failure on the part of the Investigating Agency, to have a proper investigation conducted, is not fatal to the prosecution case, as there are other attendant circumstances, which corroborate the ocular evidence of the occurrence witnesses and to identify the accused.

39. The contention that motive is not established to the hilt, is not a matter that affects the prosecution case in as much as the

occurrence has been witnessed by PWs 2, 3 and 6 and they have supported the prosecution case. Further, the evidence of PW28 is there to the effect that an amount of Rupees twenty thousand had been received from the first accused by the deceased. In fact, a suggestive question also to that effect was put to PW3 by the defence when he was cross-examined. Certainly, the amount was not being advanced to the deceased by way of loan. Even going by the evidence of PW28, what can be inferred is that the deceased was receiving amounts allegedly on the promise that it would be doubled and returned. The animosity the first accused had towards the deceased is spelled out from the utterances made by the first accused as deposed by PW2 that he would kill everybody unless he returns the money. So much of proof is sufficient as regards motive and even in the absence of any motive, when there are witnesses to swear to the occurrence motive does not gain any importance. The Apex Court has, in **Arjun Marik v. State of Bihar** (JT 1994(2) SC 627),

held that mere absence of proof of motive for commission of a crime cannot be a ground to presume the innocence of an accused, if the involvement of the accused is otherwise established. The trial court has discussed all the above aspects in its meticulous details and has come to the conclusion that the accused themselves have committed the offence of murdering the father of PWs 2 and 3 and caused injuries to PWs 2 and 3. The conviction entered into by the court below against the appellants for offences under Sections 449, 302 and 324 IPC read with Section 34 thereof, in the circumstances, is correct and sustainable and we confirm the conviction. The sentence awarded to the accused is also the lesser punishment for offence under Section 302 IPC and moderate and reasonable punishment under Sections 449 and 324 IPC read with Section 34 thereof and does not deserve to be interfered with. This appeal, in the circumstances, is devoid of merit.

In the result, confirming the conviction and sentence passed by the court below against the appellants, we dismiss this Criminal Appeal.

(J.B.Koshy, Judge)

2nd February, 2007

(K.P.Balachandran, Judge)

tkv